

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

AUSTIN SETTLEMENT, LP AS  
ASSIGNEE OF  
TEXAS COMMUNITY BANK, N.A.

v.

M/V NEFTEGAZ, Her Engines, Tackle,  
Appurtenances etc., in rem, and  
WILLIAM C. KELLEHER, in personam

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CIVIL ACTION 4:11-cv-00655

**ORDER VACATING FINAL JUDGMENT  
AND ORDER DENYING APPLICATION FOR TURNOVER RELIEF**

Came on for consideration a Motion filed by William C. Kelleher pursuant to Rule 60(b)(6) to vacate and set aside the First Amended Interlocutory Judgment and Foreclosure Order entered by this Court on August 22, 2011, as well as this Court's Order Confirming Foreclosure Sale and Final Judgment entered on November 18, 2011. Also came on for consideration an Application for Turnover Relief filed by Austin Settlement, L.P. as the assignee of Texas Community Bank, N.A., and a related Motion/Response filed by William C. Kelleher asking this Court to stay enforcement of the Final Judgment entered against him and to deny all relief sought by Austin Settlement, L.P. in its Application for Turnover Relief. This Court, based upon the arguments, legal authorities, and evidence presented, has determined that the Motions filed by William C. Kelleher are meritorious and that extraordinary and/or exceptional facts and circumstances exist that justify setting aside and vacating the Final Judgment and any related Orders that were entered against William C. Kelleher in favor of Texas Community Bank, N.A. pursuant to which Texas Community Bank, N.A. was awarded a deficiency judgment against William C. Kelleher in the principal sum of \$678,846.25, plus post-judgment interest at the rate of .12% per annum and costs of Court in the above-captioned matter. The Court has determined

that Texas Community Bank, N.A. did not handle and dispose of the collateral that it obtained relating to the debt at issue in this lawsuit, to wit, the M/V NEFTEGAZ, in a commercially reasonable manner; therefore, Texas Community Bank, N.A., as the secured party, cannot recover, and is hereby precluded from recovering, a deficiency judgment or any deficiency payment from William C. Kelleher arising from or relating to the promissory note or security agreement(s) at issue in the above-captioned lawsuit. It is, therefore,

ORDERED that this Court's Order Confirming Foreclosure Sale and Final Judgment entered on November 18, 2011 is hereby VACATED and set aside in all respects. To the extent the Order Confirming Foreclosure Sale and Final Judgment incorporates or relates to the First Amended Interlocutory Judgment and Foreclosure Order entered by this Court on August 22, 2011, the First Amended Interlocutory Judgment against William C. Kelleher is also VACATED and set aside with respect to the Court's Order that Texas Community Bank, N.A. recover from William C. Kelleher the principal amount of \$567,678.83, vessel arrest and related expenses of \$60,171.34, reasonable and necessary attorney's fees in the amount of \$30,000.00, post-judgment interest, and costs of Court. It is further,

ORDERED that Texas Community Bank, N.A. and its assignee, Austin Settlement, L.P., shall cease all efforts to collect or enforce the Final Judgment and related orders that have been vacated and set aside by this Order. It is further,

ORDERED that William C. Kelleher's Rule 62 Motion to Stay Enforcement of the Application for Turnover Relief filed by Austin Settlement, L.P. is GRANTED and Austin Settlement, L.P. shall engage in no actions to collect or enforce the Final Judgment and related orders that have been vacated and set aside by this Order. It is further,

ORDERED that all relief requested by Austin Settlement, L.P. in the Application for Turnover Relief is DENIED.

This is a Final Order that disposes of all matters, controversies, claims, and causes of action at issue in this lawsuit.

SIGNED this the \_\_\_\_\_ of \_\_\_\_\_, 2013.

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U.S. DISTRICT JUDGE